Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Notice of Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers.	)	CC Docket No. 02-39

REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

The National Association of State Utility Consumer Advocates ("NASUCA") hereby replies to comments filed in response to the *Notice of Inquiry* ("*Notice*") issued by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceeding.[1] The comments clearly show the need for continued equal access and nondiscrimination obligations on local exchange carriers. Therefore, NASUCA urges the Commission to retain the requirements.

The positions taken in the comments essentially can be categorized into three areas: three Bell Operating Companies ("BOCs") who call for elimination of the requirements;[2] a variety of parties who favor retention of the requirements;[3] and rural

---

[1] FCC 02-57, adopted February 19, 2002. A synopsis of the *Notice* was published in the Federal Register on March 11, 2002. See 67 Fed. Reg. 10919.

[2] SBC Communications, Inc. ("SBC"), Verizon Communications, Inc. ("Verizon") and BellSouth Corporation ("BellSouth").

[3] NASUCA, the Public Utilities Commission of Texas ("PUCT"), the Association of Communications Enterprises ("ASCENT"), AT&T Communications, Inc. ("AT&T"), General Communications, Inc., Sprint Corporation and WorldCom, Inc.

carrier interests who favor expanding equal access and nondiscrimination obligations to include competitive carriers, especially wireless carriers.[4] Of the commenting parties, only two, NASUCA and PUCT, have no pecuniary interest – other than better choices and lower prices for consumers – in retention or elimination of the obligations. Both parties are mandated to protect the *public* interest. Significantly, both favor retention of the obligations.

While most of the comments addressed the effect of the § 251(g) obligations on competitors and competition, the Commission should remember that the stated purpose of the Telecommunications Act of 1996 is "[t]o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers…."[5] Many of the obligations, such as the requirement that BOCs provide customers with a list of available long distance carriers and the joint marketing restrictions, are designed to protect consumers from BOCs' abusive marketing practices. The effect of these obligations is to provide consumers with more choices. The obligations should be retained.

The BOCs argue that the obligations have outlived their usefulness.[6] In support, they make three basic assertions:

- The obligations were designed to prevent BOCs from discriminating in favor of their former affiliate, AT&T;[7]

---

[4] National Telecommunications Cooperative Association and Fred Williamson and Associates. NASUCA does not address the substance of these parties' comments, nor those of TeleTruth, which addressed only Regulatory Flexibility Act issues.

[5] P.L. 104-104, 110 Stat. 56.

[6] See SBC Comments at 1; Verizon Comments at 1; BellSouth Comments at 6.

[7] See SBC Comments at 3-4; BellSouth Comments at 2.

- Competition from multiple providers means that there is no justification for continuing the obligations;[8] and

- Change is needed to help the BOCs compete more effectively in the marketplace.[9]

These assertions are baseless.

First, the equal access and nondiscrimination provisions of the Modification of Final Judgment ("MFJ"),[10] upon which the § 251(g) obligations are based, were not limited to the relationship between the BOCs and AT&T. Indeed, as SBC noted in its comments, "the MFJ court applied the MFJ so as to prohibit discrimination in favor of *any* carrier or provider."[11] Thus, the obligations are still necessary to prevent BOCs and other incumbent local exchange carriers ("ILECs") from discriminating in favor of their own long distance affiliate *or* a nonaffiliated interexchange partner.[12]

Second, there are multiple competitors in the toll marketplace *because* the equal access and nondiscrimination obligations exist. Without the obligations, BOCs would not bring "full competitive benefits" to consumers, as suggested by SBC.[13] In fact, without an equal access obligation, BOCs would have every incentive to discriminate against non-affiliated carriers. Instead, the marketplace would likely see the full anticompetitive effect that the BOCs would unleash. The number of viable competitors would inevitably shrink, to the detriment of consumers.

---

[8] SBC Comments at 9.

[9] See *id.* at 13.

[10] *United States v. American Tel. and Tel.*, 552 F. Supp. 131 (D.D.C. 1982).

[11] SBC Comments at 4 (emphasis in original). See also AT&T Comments at 11-13; ASCENT Comments at 6-7.

[12] Such discrimination and its deleterious effects are readily apparent in the wireless market, which pursuant to Section 332(c)(8) of the Act does not have an equal access obligation.

[13] *Id.* at 9.

For example, if BOCs were allowed to offer discounts on local service to customers who sign up with BOCs' long distance affiliates, as Verizon suggests, competition – and thus choices for consumers – would be adversely affected.[14] The BOCs would use their regulated local service monopoly to leverage their position into the competitive toll market.[15] While reduced rates for local service would be beneficial to consumers in the short term, the longer-term effect would be that competition in the toll market would evaporate. As the toll competition lessens, the BOC would eliminate its local service price break and could raise rates in the toll market, to the detriment of consumers. Such an anticompetitive practice is not in the public interest, and must continue to be prohibited.

Third, the outcry of the BOCs that they are unable to compete has indeed become a tired old refrain. In fact, as NASUCA's Comments noted (at 6), BOCs who have obtained § 271 approval have little problem competing in the long distance market, even with the obligations. The BOCs have failed to explain how equal access and non-discrimination requirements keep them from offering competitive options or bundled services. While it may be true that eliminating equal access may allow BOCs to extract greater revenues from their captive customers, NASUCA suggests that such a result is not in the public interest.

In the meantime, ILECs still control 91% of all local switched access lines in the United States, and at least 86% of all lines in every state but one.[16] Clearly, there is

---

[14] Verizon Comments at 13.

[15] NASUCA's Comments at 2-3 discussed how ILECs still maintain a local exchange monopoly; see also PUCT Comments at 4.

[16] See "Local Telephone Competition: Status as of June 30, 2001," Industry Analysis Division, Common Carrier Bureau (February 2002), Table 6.

insufficient competition in the local service market for the Commission to do away with the incumbents' equal access obligations. Moreover, in many areas the prospect for additional competition is bleak. In Ohio, for example, Ameritech recently filed an application to increase its rates for its unbundled network element platform ("UNE-P").[17] The application was filed only four months after the Public Utilities Commission of Ohio ("PUCO") established the UNE-P rates in a case that had been pending for more than five years.[18] The proposal would double Ameritech Ohio's monthly UNE-P charges, from $14 to $28, and would raise the one-time port charge from 74 cents to $12.79.[19] As a result, AT&T – which only recently announced that it would enter the Ohio local residential service market – may reconsider its decision.[20]

It is indeed disingenuous for the BOCs to invoke the notion of consumer benefits in their arguments against retaining the § 251(g) obligations. Elimination of equal access will clearly result in fewer choices for consumers. The BOCs support eliminating equal access precisely because reduced choice will benefit them, to the detriment of consumers. The Commission should ignore the BOCs' arguments and retain the § 251(g) obligations.

CONCLUSION

The record clearly shows that there is no justification for elimination of the equal access and nondiscrimination obligations at this time. On the other hand, as NASUCA

---

[17] *In the Matter of the Review of Ameritech Ohio's TELRIC Costs for Unbundled Network Elements*, PUCO Case No. 02-1280-TP-UNC, filed May 31, 2002.

[18] *In the Matter of the Review of Ameritech Ohio's Economic Costs for Interconnection, Unbundled Network Elements, and Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic*, PUCO Case No. 96-922-TP-UNC, Entry on Rehearing (January 31, 2002).

[19] See "SBC Ameritech seeks fee increase," Columbus *Dispatch* (May 31, 2002) at E-1.

[20] *Id.*

and others pointed out in their comments, removal of the obligations would be premature and would be detrimental to competition in both the long distance and local exchange markets. NASUCA therefore urges the Commission to retain the obligations.

Respectfully submitted,

ROBERT S. TONGREN
CONSUMERS' COUNSEL

/S/ Terry L. Etter
Terry L. Etter
David C. Bergmann
Assistant Consumers' Counsel
Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215
Phone (614) 466-8574
FAX (614) 466-9475
etter@occ.state.oh.us

Michael J. Travieso
Maryland People's Counsel
Chair, NASUCA Telecommunications Committee
On Behalf of NASUCA
Suite 2102
6 St. Paul St.
Baltimore, MD 21202

NASUCA
8300 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone (301) 589-6313
FAX (301) 589-6380

June 10, 2002

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments of the National Association of Utility Consumer Advocates was served by first-class mail, postage prepaid, to the parties of record identified below, on this 10th day of June 2002.

/S/ Terry L. Etter
Terry L. Etter
Assistant Consumers' Counsel

The Honorable Brett A. Perlman
Commissioner
Public Utility Commission of Texas
1701 Congress Avenue
P.O. Box 13326
Austin, TX 78711-3326

The Honorable Rebecca Klein
Commissioner
Public Utility Commission of Texas
1701 Congress Avenue
P.O. Box 13326
Austin, TX 78711-3326

Mark C. Roseblum, Esq.
AT&T Corp.
Room 1135L2
295 North Maple Avenue
Basking Ridge, NJ 07920

David L. Lawson, Esq.
Paul J. Zidlicky, Esq.
C. Kevin Marshall, Esq.
Sidley, Austin, Brown & Wood LLP
1501 K Street, N.W.
Washington, D.C. 20005

Charles C. Hunter, Esq.
Catherine M. Hannan, Esq.
Hunter Communications Law Group
1424 16th Street, N.W., Suite 105
Washington, D.C. 20036

E. Earl Edenfield, Jr., Esq.
Richard M. Sbaratta, Esq.
BellSouth Corporation
675 Peachtree Street, N.E., Suite 4300
Atlanta, GA 30375-0001

John T. Nakahata, Esq.
Fred B. Campbell, Jr., Esq.
Harris, Wiltshire & Grannis LLP
1200 18th Street, N.W., Suite 1200
Washington, D.C. 20036

Frederick W. Hitz, III, Esq.
General Communication, Inc.
2550 Denali Street
Suite 10000
Anchorage, AK 99503

Frederick G. Williamson, President
Fred Williamson & Associates, Inc.
2921 East 91st Street
Suite 200
Tulsa, OK 74137-3355

Bruce Kushnick, Chairman
TeleTruth
c/o New Networks Institute
826 Broadway, Suite 900
New York, NY 10003

John M. Goodman, Esq.
Verizon
1300 I Street, N.W.
Washington, D.C. 20005

Richard A. Askoff, Esq.
National Exchange Carrier Association
80 South Jefferson Road
Whippany, NJ 07981

Alan Buzacott, Esq.
WorldCom, Inc.
1133 19th Street, N.W.
Washington, D.C. 20036

Susan E. McNeil, Esq.
H. Richard Juhnke, Esq.
Jay C. Keithley, Esq.
Sprint Corporation
401 9th Street, N.W., Suite 400
Washington, D.C. 20004

L. Marie Guillory, Esq.
Daniel Mitchell, Esq.
National Telecommunications Cooperative Association
4121 Wilson Blvd., 10th Floor
Arlington, VA 22203-1801

Anu Seam, Esq.
Gary L. Phillips, Esq.
Paul K. Mancini, Esq.
SBC Communications, Inc.
1404 I Street, N.W., Suite 400
Washington, D.C. 20005